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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

THE LIBERTARIAN PARTY OF ILLINOIS,

Petitioner,

vs.

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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STATEMENT OF THE CASE

This litigation began as two separate actions in the United States District Court for the Northern District of Illinois. The two cases, *Sangmeister, et al.* v. *Woodard, et al.*, No. 76 C 3635 (Will County) and *Walsh, et al.* v.

Board of Election Commissioners of Chicago, et al., No. 76 C 3752 (Cook County), challenged the exercise of discretion by the election authorities in Will and Cook Counties in placing a particular party at the top of the ballot for the 1976 general election. Following decision at the trial court level in both cases, *Sangmeister* and *Walsh* were consolidated with *Culliton* v. *Board of Election Commissioners of the County of DuPage, et al.*, for purposes of hearing by the Seventh Circuit. After oral argument the Seventh Circuit handed down its decision in these cases in November, 1977. *Sangmeister, et al.* v. *Woodard, et al.*, 565 F.2d 460 (7th Cir. 1977). The appellate court remanded *Walsh* and *Sangmeister* to the trial court with instructions to direct defendants to adopt a constitutionally permissible ballot placement procedure.

Further proceedings were held before the trial court in accordance with the remand of the Seventh Circuit. Pursuant to direction from the trial court, the Chicago Board of Election Commissioners ("Board") and the County Clerk of Cook County ("Clerk") filed their proposed plans for placement of political parties on the general election ballot in November, 1978. On June 1, 1978, the Libertarian Party filed objections to the ballot placement plans submitted by the Board and Clerk.

On June 5, 1978, the trial court overruled the objections of the Libertarian Party to defendants' proposed ballot placement plans. The court further authorized the Board and the Clerk to proceed with ballot placement procedures as set forth in their respective proposals. (The essence of the proposal is contained in the Libertarian Party's Supplemental Appendix to its petition herein at pp. 3-4.) The Libertarian Party filed a motion to reconsider the court's order, and the court subsequently conducted a hearing on the Libertarian Party's objections. Following the hearing the trial court denied the Libertarian Party's motion that the court reconsider its decision of June 5, 1978.

The Libertarian Party filed a notice of appeal with the Seventh Circuit on July 21, 1978. Following oral argument, the Seventh Circuit upheld the decision of the trial court. *Board of Election Commissioners* v. *The Libertarian Party*, 591 F.2d 22 (7th Cir. 1979). The Libertarian Party then sought rehearing with suggestion for rehearing in banc. The Seventh Circuit refused, and petitioner now seeks from this Court a writ of certiorari to the Seventh Circuit.

ARGUMENT

The Libertarian Party's petition for writ of certiorari provides only the barest outline of an argument and lacks any meaningful analysis of either prior opinions in this case or relevant cases which would assist this Court in judging the quality of petitioner's argument. The sketchiness of petitioner's approach also makes it difficult for respondents to understand precisely what is being argued as the basis for the petition.

Given these limitations, respondents will address what we believe are the major points for consideration by this Court.* The following discussion will, we believe, demonstrate that the case law fully supports the decisions of the District Court and the Seventh Circuit Court of Appeals in this case.

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* It should be noted that petitioner has failed to state the basis for federal jurisdiction in the court of first instance, as required by Supreme Court Rule 23-1(g).

The two-tiered ballot system challenged by petitioner is the outgrowth of the prior decision of the Seventh Circuit Court of Appeals in *Sangmeister* v. *Woodard, et al.*, 565 F. 2d 460 (7th Cir. 1977). The *Sangmeister* court set forth certain principles which were to be followed by local election authorities in determining ballot placement. They were as follows:

> 1) The procedure adopted must be neutral in character....
>
> 2) The procedure adopted should take account of all political parties involved, major and/or minor. . . .
>
> 3) The County Clerks should feel free to adopt any constitutional procedure and to experiment from election to election if they feel such an approach is desirable. *Id.* at 468-469.

In *Sangmeister* the Seventh Circuit directed the election authorities to devise a ballot placement procedure which was "neutral in character" and which accounted for "all political parties." *Id.* at 468. In leaving it to local officials to devise a constitutionally permissible ballot placement system, the Seventh Circuit specifically noted that state statute had delegated broad authority to them in this field. *Id.* The Court further noted that the issue of ballot placement was a complex one better left to the expertise of the election authorities. *Id.*

The two-tiered ballot system under consideration here was developed by the Board and the Clerk and submitted to and approved by the trial court. The essential points of the plan were described by the Seventh Circuit:

> The challenged plans, submitted by the defendant, Chicago Board of Election Commissioners for the City of Chicago and the defendant County Clerk of Cook County for the areas of the county outside Chicago, provided for a lottery to determine the order of "established political parties," i.e., parties that respectively polled at least five per cent of the vote at the last election, in the top ballot positions. The other parties on the ballot, "new political parties," which became eligible to appear on the ballot by filing petitions, were placed in the order in which they filed their petitions, below the established political parties. *Board of Election Commissioners* v. *The Libertarian Party,* 591 F.2d 22, 23 (7th Cir. 1979).

On appeal the Seventh Circuit upheld the two-tiered ballot system. *Id.* Subsequently the panel and the full Circuit denied a petition for rehearing with suggestion for rehearing in banc.

In order to challenge successfully the ballot system proposed by the local election officials, petitioner must show that there was " 'an intentional or purposeful discrimination by authorities in which one class is favored over another.' " *Board of Election Commissioners* v. *The Libertarian Party, supra,* at 25, quoting from *Bohus* v. *Board of Election Commissioners,* 447 F.2d 821 (7th Cir. 1971). Having articulated the standard, the *Libertarian Party* opinion then noted:

> All the evidence in the record supports the conclusion that . . . [the purpose of the two-tiered ballot system] was to prevent voter confusion, to serve voter convenience, and, less important but still relevant, to aid in the convenient tallying of results. *Board of Election Commissioners* v. *The Libertarian Party, supra,* at 25.

The Seventh Circuit reviewed in detail the problems facing the Board and the Clerk in developing a ballot procedure which would meet constitutional requirements and yet not cause voter confusion and irregularities in voting.

Id. at 25-26. The election authorities found it necessary to make distinctions between major and minor parties in order to provide a ballot format which voters could comprehend on election day. As the Seventh Circuit's opinion clearly demonstrates, mingling of major and minor parties through lottery or rotation would have invited chaos in the conduct of elections in Cook County.

Further, as the Court noted:

> The Supreme Court has recognized that distinctions between major and minor political parties do not necessarily violate the equal protection clause. The Court has upheld the constitutionality of statutes requiring candidates not nominated by major parties to obtain given numbers of signatures on petitions before being placed on the ballot. *Jenness* v. *Fortson,* 403 U.S. 431, 442, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971); *American Party of Texas* v. *White,* 415 U.S. 767, 782 n.14, 94 S.Ct. 1296, 39 L.Ed.2d 744 (and accompanying text) (1974). *Cf. Buckley* v. *Valeo,* 424 U.S. 1, 96, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). Among the justifications for sustaining these requirements was the most important of the interests the two-tier system at bar was designed to serve, viz, avoidance of voter confusion. Unless this "important," 403 U.S. at 442, 91 S.Ct. 1970, and, "admittedly vital," 415 U.S. at 782 n.14, 94 S.Ct. 1296, interest is protected, the result may be "frustration of the democratic process," 403 U.S. at 442, 91 S.Ct. 1970; quoted in 415 U.S. at 782 n.14, 94 S.Ct. 1970. *Id.* at 26.

Equally important, the two-tiered ballot system does provide, contrary to the assertion of petitioner, the opportunity for all political parties to achieve the top ballot position. Any party that secures 5% of the vote at an election becomes an established political party under Illinois law. All established political parties are eligible

for the lottery which determines placement on the top line of the ballot.

Again, as the Seventh Circuit noted:

> It can be said of the challenged ballot placement system that, like the nomination procedure approved in *Jenness* v. *Fortson, supra,* 403 U.S. at 439, 91 S.Ct. at 1975, it "in no way freezes the status quo, but implicity recognize[d] the potential fluidity of American political life." Under Illinois law, a new political party may become "established" by polling more than 5 per cent of the vote at an election. *Id.* at 26.

The Seventh Circuit, after reviewing the facts and law of the case, stated:

> In conclusion, we find that the two-tier system of ballot placement authorized by the District Court is a reasonable solution of the problems faced by the election officials and has not been shown to be the product of invidious discrimination. It is consistent with our instructions in *Sangmeister* that the procedure be neutral in character and take into account all political parties involved, major and minor. *Id.* at 27.

It should be noted that the Seventh Circuit found that the two-tiered ballot placement plan was "specifically authorized and directed by" State Board of Elections Regulation 76-3. *Id.* at 24 n.2. Accordingly, the Court concluded that there was a basis in law for the plan. *Id.*

Neither the Libertarian Party's petition for rehearing in banc nor its petition for writ of certiorari sets forth in any meaningful way errors in the reasoning of the Seventh Circuit in the *Libertarian Party* case. Petitioner states, without offering any reasoning or analysis, that the decision of the Seventh Circuit in the *Libertarian Party* case is inconsistent with *Snowden* v. *Hughes,* 321 U.S. 1 (1944),

and the Seventh Circuit's prior decision in *Sangmeister* v. *Woodard, supra.* We submit that the decision of the Seventh Circuit in the *Libertarian Party* case is consistent with *Snowden* v. *Hughes* to the extent that *Snowden* is relevant, but we are unable to respond to any specific analysis of the relationship between the cases because petitioner has provided none. We further submit that a review of the Seventh Circuit's decision and reasoning in the *Libertarian Party* case will support the conclusion that the two-tiered ballot system plan is fully consistent with the principles articulated in *Sangmeister.*

In its petition the Libertarian Party cites *Illinois State Board of Elections* v. *Socialist Workers Party, et al.,* United States Supreme Court, No. 77-1248, as authority for this Court finding that the Seventh Circuit's decision in this case was in error. Petitioner offers no analysis to demonstrate why this case should be controlled by the *Socialist Workers Party* decision. In fact, the issues in the two cases are quite different. In the *Socialist Workers Party* case, this Court was presented with a distinction between two state statutes regarding the number of signatures required for new political parties and independent candidates for state-wide office and for offices of political subdivisions within the state. *State Board of Elections* v. *Socialist Workers Party,* Slip Opinion, at pp. 1-2. As the Court noted in its opinion, the impact of the statutes was that a new party or independent candidate needed substantially more signatures to obtain access to the ballot in the City of Chicago than a similarly situated party or candidate for state-wide office. *Id.* at p. 3. The Court concluded that, while there may have been historical reasons for the different signature requirements, there was no longer any reason that justified the distinction. Accordingly, the Court

held that the Illinois election code was unconstitutional insofar as it required independent candidates and new political parties to obtain more signatures for offices in the City of Chicago than for state-wide office. *Id.* at 13.

The Libertarian Party has failed (if it can be said that petitioner made an attempt) to demonstrate any basis for this Court's granting a writ of certiorari. There is no conflict between the *Libertarian Party* decision and decisions in other circuits; there is no conflict with *Snowden*; and there is no conflict with *Sangmeister.*

CONCLUSION

Based on the foregoing argument, the respondents pray this Court to deny the petition for writ of certiorari to the Seventh Circuit.

Respectfully submitted,

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